

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

Claims 1, 3, 5, 7, 10-11

The Examiner has rejected claim 1 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of either Abbott or Miller. Applicant's attorney has amended claim 1 and believes said amendment places the claim in condition for allowance.

The Examiner alleges that Robinson meets all claimed limitations except for the outer skirt having a frusto-conical configuration. The Examiner further alleges that Abbott or Miller disclose an outer wall of a closure with a frusto-conical configuration. MPEP 2142 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicant's attorney asserts that the Examiner has not made a *prima facie* showing of obviousness since the Examiner has not shown all of the element of the claimed invention.

Applicant's attorney has amended claim 1 to more clearly define the patentable subject matter. Claim 1 now claims a rib attached to the top wall and the inner skirt and having a width which is less than a distance between the outer skirt and the inner skirt. The Robinson reference shows ribs 80-86 which extend radially between and connect at respective axially opposite ends to the inner and outer skirts. See col. 6 lin. 62-65. The disclosure further states that the ribs are integrally joined at upper edges to the base wall peripheral portion of the closure base wall. See. col. 7, lin. 7-10. Thus, the Robinson reference describes a rib which is connected to the top wall, the inner skirt, and the outer skirt or

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along three sides. The newly amended claim limitations of claim 1 describe at least one rib which is not connected to the outer skirt and thus comprises a gap between the rib and the outer skirt. Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness.

Applicant's attorney further asserts there is no suggestion or motivation by one of ordinary skill in the art to make the in the combination of Robinson and Abbott as indicated by the Examiner. The Robinson reference teaches a squeeze and turn closure having locking lugs on the inner surface of the skirt circumferentially spaced from squeeze points on the outer skirt of the closure. The Abbott reference teaches a bottle cap having an inwardly and downwardly inclined skirt. The Abbott reference does not disclose threads within the bottle cap and likely is a press type cap rather than a threadable type closure. Nevertheless, there is no suggestion or motivation to make the indicated combination since the Robinson reference teaches away from this combination and the resulting closure would be non-functional. Referring to Fig. 2 of the Robinson reference, it is clearly shown that the closure skirt 30 must clear the locking lugs 70,72. An inwardly directed skirt would not clear the locking lugs 70,72 of the container neck. In fact, as shown in Fig. 2 the top wall 26 does not clear the locking lug 72 so the skirt 30 of the Robinson reference must extend slightly radially outward or taper outwardly. Thus the Robinson reference teaches away from an inwardly directed outer skirt and the combination indicated by the Examiner would not function. Moreover, the indicated combination would not function for at least one additional reason. Robinson teaches a squeeze and turn closure. By combining the Robinson closure and container with the inwardly angled skirt of Abbott, a user would not be able to squeeze inwardly on the closure to disengage locking lugs on the closure and container neck. The Abbott skirt would be too close to the container

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neck and not allow enough clearance for the closure to be squeezed in order to disengage the locking lugs 70, 72.

Finally, the Abbott reference does not teach the inclined skirt for enhanced gripping. Since the Abbott reference is a design patent, the features being taught therein are ornamental. The Examiner has taken the features of the instant application and sought out those features in the prior art stating the prior art teaches what is being taught in the instant application. This is an impermissible hindsight rejection and it is clear there was no suggestion or motivation in the prior art to make said combination. Since there is no suggestion or motivation for one of ordinary skill in the art to make the indicated combination, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness. For these reasons, Applicant's attorney respectfully requests the Examiner withdraw this ground of rejection.

With respect to the combination of Robinson and Miller, Applicant's attorney asserts that not all the elements of the instant claim have been shown by the combination. Robinson discloses a squeeze and turn double shell closure. The instant application claims an outer skirt having a top diameter greater than a bottom diameter. Robinson does not disclose this limitation, but rather teaches a slightly outwardly tapered skirt. Miller discloses a top surface of a closure from which a spout extends having a first diameter and a second diameter, being greater than the first diameter, from which the hinge 18 extends. A bottom edge of the Miller closure has a third diameter which is greater than the first diameter and forms a vertical sidewall or skirt. The closure also appears to have a plurality of tabs or ribs extending along the outer surface of the skirt. However, the combination of Robinson and Miller does not teach or suggest the claimed invention having a first diameter at the

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top edge of the outward face and a second diameter at the bottom edge of the outward face wherein said top diameter is greater than said bottom diameter. The Miller reference shows an outwardly tapered portion above the vertical skirt and the Robinson reference shows an upper portion of a closure skirt having a slightly outward taper. Since the Examiner has failed to show all the elements of the claimed invention, Applicant's attorney asserts that the Examiner has failed to make a prima facie showing of obviousness. Applicant's attorney respectfully requests this ground of rejection be withdrawn.

The Examiner has rejected claims 3, 5, 7, and 10-11 which depend directly or indirectly from claim 1. As discussed above the Examiner has failed to make a prima facie showing of obviousness with either of the indicated combinations of prior art. Since claims 3, 5, 7, and 10-11 depend from claim 1, Applicant's attorney asserts that they are nonobvious and in condition for allowance. Applicant's attorney respectfully requests that the Examiner withdraw this ground of rejection.

Claims 12, 14, 16, 17, and 20-21

The Examiner has rejected claim 12 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of either Abbott or Miller. Applicant's attorney has amended claim 12 and believes said amendment places the claim in condition for allowance.

The Examiner alleges that Robinson meets all claimed limitations except for the outer skirt having a frusto-conical configuration. Applicant's attorney has amended the independent claim 12 to more clearly define the at least one rib wherein the at least one rib has a width less than a distance defined between the inner skirt and the outer skirt. Neither the Robinson, Miller, nor Abbott references teach this limitation but instead the Robinson patent describes a rib connected along three

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sides.

The Examiner further alleges that Abbott or Miller disclose an outer wall of a closure with a frusto-conical configuration. However as discussed above, there is no suggestion or motivation to combine Robinson and Miller and therefore the Examiner has not made a prima facie showing of obviousness. In addition, as discussed above, the combination of Abbott and Miller does not teach all of the limitations of the instant claimed invention.

The Examiner has rejected claims 14, 16, 17, and 20-21 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view either Abbott or Miller. The Applicant respectfully traverses this ground of rejection. Claims 14, 16, 17, and 20-21 depend from claim 12 which has been amended and is believed to be in condition for allowance. Therefore, Applicant's attorney asserts that claims 14, 16, 17, and 20-21 are in condition for allowance.

Claims 22 and 25-26

The Examiner has rejected claims 22 and 25-26 under 35 U.S.C. §103 as being unpatentable over Robinson in view of either Abbott or Miller. Claim 22 has been amended to more clearly define the patentable subject matter and respectfully requests the Examiner withdraw this ground of rejection.

As amended, claim 22 claims a rib having a first axial dimension at the inner skirt and a second axial dimension at the outer skirt, said first axial dimension being less than said second axial dimension. Robinson does not teach the newly amended limitation. Moreover, the Abbott and Miller references fail to teach this limitation. Thus the Examiner has not taught all of the limitations

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of the newly amended claim 22 and therefore has not made a prima facie showing of obviousness.

Applicant's attorney respectfully requests this ground of rejection be withdrawn.

Claims 25-26 depend from claim 22 and therefore include the limitations of claim 22. Thus, the Examiner has not shown a prima facie case of obviousness for claims 25-26 and Applicant's attorney respectfully requests this ground of rejection be withdrawn.

35 U.S.C. §103(a) Rejection of Claims 4, 15, and 27

The Examiner has rejected claims 4, 15 and 27 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of Marques et al. Applicant's attorney respectfully traverses this ground of rejection.

Concerning claim 4, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness of claim 1 with the indicated combinations since not all of the limitations have been shown. Since claim 4 depends from claim 1 and includes all of the limitations of claim 1, the Examiner has not made a prima facie showing of obviousness for claim 4. Applicant's attorney asserts that claim 1 is in condition for allowance and respectfully requests this ground of rejection be withdrawn.

Concerning claims 15 and 27, Applicant's attorney asserts that the Examiner has not shown all of the elements of the newly amended claims 12 and 22 from which claims 15 and 27 depend, respectively. As such, all of the limitations of claims 15 and 27 have been not shown and the Examiner has not shown a prima facie case of obviousness. Applicant's attorney respectfully requests this ground of rejection be withdrawn.

35 U.S.C. §103(a) Rejection of Claims 1, 2, 4-9, 12, 13, 15-19, 22-24, and 27

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The Examiner has rejected claims 1, 2, 4-9, 12, 13, 15-19, 22-24, and 27 under 35 U.S.C. 103(a) as being unpatentable over Parchimy in view of Abbott and further in view of Elkner. Applicant's attorney has amended claims 1, 12, and 22 and believes said claims to be in condition for allowance.

First the Examiner states that the combination teaches all of the limitations of the independent claims. However Applicant's attorney has amended the claims 1 and 12 to more clearly define the patentable subject matter. The newly amended claims now describe at least one rib having a width less than a distance between the inner skirt and the outer skirt. The combination of cited art does not teach this limitation and therefore has not made a prima facie showing of obviousness.

With respect to claim 22, Applicant's attorney has amended the claim to more clearly define the patentable subject matter. As amended the claim 22 claims a rib extending from the inner skirt to the outer skirt and having a first axial dimension at said inner skirt and a second radial dimension at said outer skirt, said first dimension being less than said outer skirt. The prior art does not show this limitation and thus the Examiner has not shown a prima facie case of obviousness.

Concerning claims 1, 12, and 22, the Examiner further alleges that it would have been obvious to one of ordinary skill in the art to provide the frusto-conical configuration on the outer wall of Parchimy as taught by Abbott to grip the closure easily and to provide ribs connecting the inner wall with the outer wall in the modified container of Parchimy as taught by Elkner to provide additional structural strength or support. Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness. One factor in making a prima facie showing of obviousness is

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that there must be a suggestion or motivation in the prior art to make the suggested combination. In this instance, there is no suggestion to make the cited combination. The Federal Circuit has stated:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992).

Instead, the Examiner has pieced the combination together using the instant claim as a template. This is an impermissible hindsight rejection which the Court of Appeals for the Federal Circuit has stated is improper. First, the Examiner states that it would have been obvious to provide the frusto-conical configuration of Abbott to the outer wall of Parchimy in order to grip the closure easily. However, the Abbott patent is a design patent and therefore teaches ornamental features. The Abbott design patent however does not teach, suggest, or provide motivation for the cited combination and does not disclose use of the frusto-conical configuration as a grip. Since there is no suggestion or motivation for the cited combination, the Examiner has clearly made an impermissible hindsight reconstruction.

Second, the Examiner has stated that it would have been obvious to combine the modified Parchimy closure with the ribs of Elkner as taught to provide structural strength and/or support. However, there is no suggestion or motivation to make the cited combination. Elkner, like Abbott, is a design patent and teaches ornamental features. There is no suggestion or motivation taught by the Elkner reference teaching the use of ribs for strength or support. Thus, the Examiner is picking and choosing between prior art references

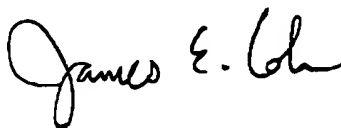
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and has used the instant claimed invention as a template or instruction manual. There is no suggestion or motivation to make this rejection and Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness. As such, Applicant's attorney respectfully requests the Examiner withdraw this ground of rejection.

Conclusion

Applicant urges that the instant application is in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a collect call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
C. Edward Luker

Serial No.: 09/876,336

Filed: 6/07/01

For: Double Shell Closure With Support
Ribs

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: Examiner: T. M. Mai
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: Group Art Unit: 3727
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AMENDMENT A UNDER RULE 111(c) MARKED UP VERSION

IN THE CLAIMS

1. (once amended) A container closure comprising:

- a. a top, having an interior surface and an exterior surface;
- b. an annular outer skirt, depending from and being [essentially] centered on the interior surface of said top, said outer skirt having a first face which faces inward toward the center of said outer skirt, a second face which faces outward from said skirt, a top edge which abuts said top, and a bottom edge, and said outer skirt having a first diameter at the top edge of the outward face and a second diameter at the bottom edge of the outward face wherein said top diameter is greater than said bottom diameter causing said outer skirt to have a frusto-conical configuration on the exterior surface;

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c. at least one annular inner skirt, depending from and being [essentially] centered on the interior surface of said top, said inner skirt having a first surface which faces inward toward the center of the skirt and a second surface which faces outward toward said outer skirt;

d. at least one rib, depending from said top and attached to the outward facing surface of said inner skirt[.];

e. said at least one rib having a width less than a distance between said inner skirt and said outer skirt.

2. (once amended) The closure of Claim 1 wherein said inner skirt defines a length and said rib is [essentially] the same length as said inner skirt.

4. (once amended) The closure of Claim 1 wherein said inner skirt has a diameter that is less than the bottom diameter of said outer skirt and said closure further includes an annular flange depending from the interior surface of said top and being [essentially] centered on the interior surface of said top, said flange having a diameter that is smaller than the diameter of said inner skirt.

Please cancel claim 7.

8. (once amended) The closure of Claim [7] 1 wherein said inner skirt defines a length and at least part of said rib is [essentially] the same length as said inner skirt.

9. (once amended) The closure of Claim [7] 1 wherein said outer skirt defines a length and at least part of said rib is [essentially] the same length as said outer skirt.

10. (once amended) The closure of Claim [7] 1 wherein said inner skirt defines a length and at least part of said rib is shorter than the length of said inner skirt.

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11. (once amended) The closure of Claim [7] 1 wherein said outer skirt defines a length and at least part of said rib is shorter than the length of said outer skirt.

12. (once amended) A container closure comprising:

- a. a top, having an interior surface and an exterior surface;
- b. an annular outer skirt, depending from and being [essentially] centered on the interior surface of said top, said outer skirt having a first face which faces inward toward the center of said outer skirt, a second face which faces outward from said skirt, a top edge which abuts said top, and a bottom edge, and said outer skirt having a first diameter at the top edge of the outward face and a second diameter at the bottom edge of the outward face wherein said top diameter is greater than said bottom diameter causing said outer skirt to have a frusto-conical configuration on the exterior surface;
- c. an annular inner skirt, depending from and being [essentially] centered on the interior surface of said top, said inner skirt having a first surface which faces inward toward the center of the skirt and a second surface which faces outward toward said outer skirt;
- d. at least one thread attached to the inward facing surface of said inner skirt; and,
- e. at least one vertical rib, depending from said top and attached to the outward facing surface of said inner skirt and having a width less than a distance between an outer skirt and an inner skirt.

13. (once amended) The closure of Claim 12 wherein said inner skirt defines a length and said rib is [essentially] the same length as said inner skirt.

15. (once amended) The closure of Claim 12 wherein said inner skirt has a diameter that is less than

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the bottom diameter of said outer skirt and said closure further includes an annular flange depending from the interior surface of said top and being [essentially] centered on the interior surface of said top, said flange having a diameter that is smaller than the diameter of said inner skirt.

Please cancel claim 17.

18. (once amended) The closure of Claim [17] 12 wherein said inner skirt defines a length and at least part of said rib is [essentially] the same length as said inner skirt.

19. (once amended) The closure of Claim [17] 12 wherein said outer skirt defines a length and at least part of said rib is [essentially] the same length as said outer skirt.

20. (once amended) The closure of Claim [17] 12 wherein said inner skirt defines a length and at least part of said rib is shorter than the length of said inner skirt.

21. (once amended) The closure of Claim [17] 12 wherein said outer skirt defines a length and at least part of said rib is shorter than the length of said outer skirt.

~~22.~~ (once amended) A container closure comprising:

- a. a top, having an interior surface and an exterior surface;
- b. an annular outer skirt, depending from and being [essentially] centered on the interior surface of said top, said outer skirt having a first face which faces inward toward the center of said outer skirt, a second face which faces outward from said skirt, a top edge which abuts said top, and a bottom edge, and said outer skirt having a first diameter at the top edge of the outward face and a second diameter at the bottom edge of the outward face wherein said top diameter is greater than said bottom diameter causing said outer skirt to have a frusto-conical configuration on the exterior surface;

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- c. an annular inner skirt, depending from and being [essentially] centered on the interior surface of said top, said inner skirt having a first surface which faces inward toward the center of the skirt and a second surface which faces outward toward said outer skirt;
- d. at least one thread attached to the inward facing surface of said inner skirt; and
- e. at least one rib, depending from said top and extending radially along said top to said outer skirt, said rib also being attached to the outward facing surface of said inner skirt [and extending from said inner skirt to said outer skirt.];
- f. said at least one rib having a first axial dimension at said inner skirt and a second axial dimension at said outer skirt, said first axial dimension being less than said second axial dimension.

23. (once amended) The closure of Claim 22 wherein said inner skirt defines a length and at least part of said rib is [essentially] the same length as said inner skirt.

24. (once amended) The closure of Claim 22 wherein said outer skirt defines a length and at least part of said rib is [essentially] the same length as said outer skirt.

27. (once amended) The closure of Claim 22 wherein said inner skirt has a diameter that is less than the bottom diameter of said outer skirt and said closure further includes an annular flange depending from the interior surface of said top and being [essentially] centered on the interior surface of said top, said flange having a diameter that is smaller than the diameter of said inner skirt.